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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,429	12/12/2003	Jean-Christophe Francis Audonnet	454313-3159.1	2595
20999	7590	01/16/2008		
FROMMER LAWRENCE & HAUG			EXAMINER	
745 FIFTH AVENUE- 10TH FL.				MOSHER, MARY
NEW YORK, NY 10151			ART UNIT	PAPER NUMBER
			1648	
			MAIL DATE	DELIVERY MODE
			01/16/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/735,429	AUDONNET ET AL.	
Examiner	Art Unit		
Mary E. Mosher, Ph.D.	1648		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 01 November 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-29 is/are pending in the application.  
4a) Of the above claim(s) 1-14, 16-20, 22, 23 and 29 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 15, 21 and 24-28 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 13 December 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_.  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date .  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_.

## **DETAILED ACTION**

The examiner of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1648, examiner Mosher.

### ***Election/Restrictions***

Applicant's election, with traverse, of group II, species canarypox, HA from influenza A/equi-2/Newmarket/2/93, adjuvant EMA, is noted.

Claims 1-14, 16-20, 22, 23, and 29 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/20/2007.

### ***Drawings***

The previous Office action erred in indicating that the drawings filed 12/12/2003 are accepted. Figure 4 is objected to, because it was filed as a color drawing. In addition, when Figure 4 is reproduced in black and white, the colors all turn black and the key becomes essentially incomprehensible.

Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

It is suggested that applicant file an amended drawing with the same information content but with black-and-white markings, e.g. cross-hatching, diagonal lines, etc.

### ***Response to Arguments***

On reconsideration, the 103 rejections of record are withdrawn, because the claims require use of a live recombinant virus, and nothing in either Tartaglia US 5990091 or Molitor (1985) provides a reason to choose the EMA adjuvant (used for inactivated virus vaccines in Molitor) with the live recombinant virus of Tartaglia.

Also, the obviousness-type double patenting rejection over claims of US 655864 in view of Molitor (1985) is withdrawn, for similar reasons.

### ***Double Patenting***

Claims 15, 21, 24-28 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 8, 14-17 of U.S. Patent No. 6713068. This is a modification of the previous double patenting rejection under 35 USC 101. Applicant argues that the claims are not identical and are distinct from the patent, because these claims require that a single dose provide immunity against influenza virus. This recitation does provide some difference in claim scope, because the patent claims are broad enough to encompass compositions which are of sufficiently low immunogenicity that two doses are required for protection. However, in reviewing

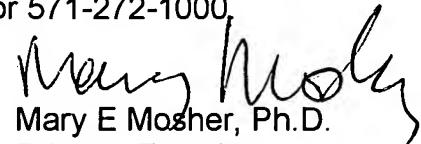
the supporting disclosure that illustrates the scope and content of the claims, new example 14 (showing single-dose protection) and patent example 10, the vaccine composition was identical in both cases. The method of administration was different, but the compositions were the same. Therefore the ability to protect with a single dose is seen as an inherent characteristic of the previously patented vaccine, particularly for the preferred embodiment used in the examples. Therefore the instant vaccine compositions are not seen as patentably distinct from the previously patented vaccine compositions.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is 571-272-0906. The examiner can normally be reached on varying dates and times; please leave a message..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mary E. Mosher, Ph.D.  
Primary Examiner  
Art Unit 1648

1/14/08